



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0052]

Hours of Service (HOS) of Drivers; Application for Renewal of American Pyrotechnics Association Exemptions From the 14-Hour Rule and the Electronic Logging Device Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemptions.

SUMMARY: FMCSA announces its decision to grant exemptions for 32 member companies of the American Pyrotechnics Association (APA) from certain hours of service (HOS) regulations during designated Independence Day periods. The exemptions will allow drivers for these companies to exclude off-duty and sleeper berth time of any length from the calculation of the 14-hour limit and to use paper records of duty status (RODS) in lieu of electronic logging devices (ELDs). FMCSA has analyzed the application for exemptions and the public comments submitted and has determined that the exemptions, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved through compliance with the regulations.

DATES: These exemptions are effective for the period June 28 through July 8, at 11:59 p.m. local time, each year from 2023 through 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4225. E-mail: pearlie.robinson@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number (“FMCSA-2021-0052”) in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2021-0052” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49

CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The HOS regulation in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying commercial motor vehicle (CMV) from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. Drivers required to prepare RODS must do so using ELDs under 49 CFR 395.8(a)(1)(i). However, under 49 CFR 395.8(a)(1)(iii)(A)(I), a motor carrier may allow its drivers to record their duty status manually, rather than use an ELD, if the driver is operating a CMV “[i]n a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period.”

Applicant’s Requests

APA reports that over 16,000 fireworks displays are conducted annually. Although most of the displays are conducted on July 4 each year, it is impossible to deliver and shoot all of the fireworks displays on the Fourth of July holiday. Thus, the fireworks displays are spread out over a period of 11 days.

APA requests renewal of its HOS exemptions from the 14-hour rule in 49 CFR 395.3(a)(2) and the ELD rule in 49 CFR 395.8(a)(1)(i) for 42 of 60 companies included in the 2021 HOS exemptions, which expired on July 8, 2021 [86 FR 34834]. The APA also requests the exemptions on behalf of 3 additional companies not included in the 2021 HOS exemptions. A copy of the request and additional correspondence modifying the request are in the docket at the beginning of this notice.

APA member companies have held waivers or exemptions during Independence Day periods each year since 2005. Copies of the initial request for an exemption, subsequent renewal requests, and all public comments received may be reviewed at www.regulations.gov under docket numbers FMCSA-2005-21104, FMCSA-2007-28043, FMCSA-2018-0140, and FMCSA-2021-0052.

On June 16, 2022, FMCSA granted APA a waiver from the 14-hour and ELD regulations, effective June 28, 2022, through July 8, 2022. Prior to issuing the waiver, the Agency conducted a safety analysis of the 45 carriers included in APA's request. The Agency determined that 38 carriers were eligible for the waiver. The waiver allowed these carriers to operate with the requested relief for 11 days during the 2022 Independence Day period and provided the Agency with sufficient time to process APA's exemption request. A copy of the waiver is located at www.regulations.gov under docket number FMCSA-2021-0052.

IV. Equivalent Level of Safety

Since 2005, FMCSA has determined that the level of safety associated with the transportation of fireworks would likely be equivalent to, or greater than, the level of safety obtained by complying with the 14-hour rule. In 2019, FMCSA reached the same conclusion when it granted APA relief from the ELD requirement. APA believes an equivalent level of safety will be achieved because the fireworks are transported over relatively short routes from distribution points to the site of the fireworks display, and normally in the morning when traffic is light. APA also believes that fatigued driving is reduced or eliminated because drivers spend considerable time installing, wiring, and safety-checking the fireworks displays at the site, followed by several hours off duty in the late afternoon and early evening prior to the event. During this off-duty time, the drivers are allowed to rest or take a nap. Additionally, these drivers would continue to use paper RODS in lieu of an ELD during the designated Independence Day periods. APA

asserts that the scheduled off duty time and use of RODS will ensure that fatigued driving is managed.

V. Public Comments

On July 8, 2022, FMCSA published notice of APA's application and requested public comments (87 FR 40874). The Agency received one comment. AWM Associates, LLC, stated that FMCSA should deny the exemption because the requested timeframe of 11 days is unreasonable. AWM Associates noted that drivers are not required to use an ELD if they use paper logs no more than 8 days during any 30-day period and questioned why APA member companies would need an exemption from the 14-hour rule after July 5.

VI. FMCSA Response

Based on the information APA provided, FMCSA determines that the requested period of 11 days is reasonable. APA explained in its application that fireworks displays are spread out over a period of 11 days because it would be impossible to deliver and shoot all 16,000 professional fireworks displays on July 4. To cover the 11-day period without the exemptions, APA states that its members would have to hire additional drivers with commercial driver's licenses (CDLs) and hazardous material endorsements for a very brief period. APA explains that it would be difficult or impossible to find enough qualified drivers for this part-time, holiday-specific work, and the increased cost could be passed along to the cities, towns and municipalities that contract these shows.

VII. FMCSA Safety Analysis and Decision

FMCSA has evaluated APA's application and the safety records of the 45 companies to which the exemptions would apply and grants the exemptions to 32 APA member companies. FMCSA believes that these 32 APA member companies will likely achieve a level of safety equivalent to or greater than the level of safety achieved without the exemption.

Prior to publishing the Federal Register notice announcing receipt of APA's application to renew its HOS exemptions, FMCSA ensured that each motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any "imminent hazard" or other out-of-service (OOS) orders. The Agency conducted a comprehensive review of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and crash reports submitted to FMCSA by State agencies. The motor carriers have "satisfactory" safety ratings issued by FMCSA and valid Hazardous Materials Safety Permits. In addition, the Pipeline and Hazardous Materials Safety Administration reviewed its investigative records. The member carriers may be subject to investigations prior to future renewal of the exemptions.

FMCSA denies the exemptions for 13 APA member companies. FMCSA found that 12 member companies have vehicle and/or HM OOS rates higher than the national average as of August 9, 2022. The 13th member company was excluded because the company does not have a Hazardous Materials Safety Permit. Under these circumstances, FMCSA believes it would be inappropriate at this time to grant exemptions to these companies.

A. Grant of Exemptions.

FMCSA grants the exemptions for a period June 28 through July 8 for two years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under Section F below. The exemptions from 49 CFR 395.3(a)(2) and 49 CFR 395.8(a)(1)(i) are effective for the period June 28 through July 8 each year from 2023 through 2024.

B. Applicability of Exemptions

The exemptions are limited to drivers employed by the 29 motor carriers previously covered by the exemptions, and drivers employed by the 3 additional carriers identified by an asterisk in the appendix table of this notice. Drivers covered by these exemptions will be able to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. Drivers will be able to use paper RODs in lieu of ELDs to record their HOS.

C. Terms and Conditions

When operating under these exemptions, motor carriers and drivers are subject to the following terms and conditions:

1. Drivers must not drive more than 11 hours after accumulating 14 hours on duty prior to beginning a new driving period.
2. Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period.
3. Drivers must use paper RODS and supporting documents, maintain RODS and supporting documents for 6 months from the date the record is prepared, and make RODS and supporting documents accessible to law enforcement upon request.
4. Drivers and carriers subject to the ELD requirements before June 28 must continue to use ELDs and comply with all ELD requirements, including maintaining ELD data for 6 months from the date the electronic record is generated and making ELD data accessible to law enforcement upon request.
5. Drivers must maintain a valid CDL with a hazardous materials endorsement and not be subject to an out-of-service order or loss of driving privileges.
6. Motor carriers must maintain a Hazardous Materials Safety Permit and Satisfactory safety rating assigned by FMCSA under the procedures in 49 CFR part 385.

7. Motor carriers must ensure their CMVs are properly marked as required by 49 CFR 390.21(a)-(d). Motor carriers operating rented CMVs may not rely on the marking provisions of 49 CFR 390.21(e).
8. Motor carriers must ensure they comply with the requirements for shipping papers, package marking, labeling, and placarding in 49 CFR part 172.
9. Drivers and motor carriers covered by the exemptions must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) (FMCSRs) and Hazardous Materials Regulations (49 CFR parts 105-180) (HMRs).
10. Prior to the beginning of each period of operations during the exemption, FMCSA will ensure that each motor carrier possesses an active USDOT registration, minimum required levels of insurance, and was not subject to any “imminent hazard” or other out-of-service (OOS) orders. FMCSA will also conduct a comprehensive review of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA will review its Motor Carrier Management Information System safety records, including inspection and crash reports submitted to FMCSA by State agencies.
11. Motor carriers may be investigated to evaluate compliance with the terms and conditions of this exemption, in addition to the FMCSRs and HMRs.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period these exemptions would be in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with the exemptions with respect to a firm or person operating under the exemptions. States may,

but are not required to, adopt the same exemptions with respect to operations in intrastate commerce.

E. Notification to FMCSA

Motor carriers using exempt drivers must notify FMCSA within five business days of any crashes (as defined by 49 CFR 390.5) involving the operation of any its CMVs while operating under these exemptions. The notification must include the following information:

- a. Identifier of the Exemptions: “APA”;
- b. Date of the crash;
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the crash;
- d. Driver’s name and driver’s license State, number, and class;
- e. Co-Driver’s name and driver’s license State, number, and class;
- f. Vehicle company number and power unit license plate State and number;
- g. Number of individuals suffering physical injury;
- h. Number of fatalities;
- i. The police-reported cause of the crash;
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the crash.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

F. Termination

FMCSA does not believe the motor carriers or drivers covered by these exemptions will experience any deterioration of their safety record. The exemptions will

be rescinded if: (1) motor carriers and drivers operating under the exemptions fail to comply with the terms and conditions of the exemptions; (2) the exemptions have resulted in a lower level of safety than was maintained before the exemptions were granted; (3) the annual investigation yields unsatisfactory results; or (4) continuation of the exemptions would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Robin Hutcheson,
Administrator.

**Appendix to Notice of Applications for Renewal of APA Exemptions From
the 14-Hour and ELD HOS Rules for Independence Day Periods
June 28, 2022 Through July 8, 2024 for 32 Motor Carriers**

| | Motor carrier | Street address | City, state, zip code | DOT No. |
|----|---|-----------------------------|------------------------------|----------------|
| 1 | American Fireworks Display, LLC | 105 County Route 7 | McDonough, NY 13801 | 2115608 |
| 2 | AM Pyrotechnics, LLC | 2429 East 535th Rd. | Buffalo, MO 65622 | 1034961 |
| 3 | Arthur Rozzi Pyrotechnics | 6607 Red Hawk Ct. | Maineville, OH 45039 | 2008107 |
| 4 | Artisan Pyrotechnics, Inc. | 82 Grace Road | Wiggins, MS 39577 | 1898096 |
| 5 | Celebration Fireworks, Inc. | 7911 7th Street | Slatington, PA 18080 | 1527687 |
| 6 | *CP Transport, LLC | 6377 Hwy. 62 NE | Lanesville, IN 47136 | 3076205 |
| 7 | Dominion Fireworks, Inc. | 669 Flank Road | Petersburg, VA 23805 | 540485 |
| 8 | Falcon Fireworks | 3411 Courthouse Road | Guyton, GA 31312 | 1037954 |
| 9 | Fireworks & Stage FX America | 12650 Hwy 67S. Suite B | Lakeside, CA 92040 | 908304 |
| 10 | Fireworks by Grucci, Inc. | 20 Pinehurst Drive | Bellport, NY 11713 | 324490 |
| 11 | Aluminum King Mfg., Ltd. dba Flashing Thunder Fireworks | 700 E Van Buren Street | Mitchell, IA 50461 | 420413 |
| 12 | Great Lakes Fireworks | 24805 Marine | Eastpointe, MI 48021 | 1011216 |
| 13 | Hollywood Pyrotechnics, Inc. | 1567 Antler Point | Eagan, MN 55122 | 1061068 |
| 14 | Johnny Rockets Fireworks Display Company | 3240 Love Rock | Steger, IL 60475 | 1263181 |
| 15 | Las Vegas Display Fireworks, Inc. | 4325 West Reno Ave. | Las Vegas, NV 89118 | 3060878 |
| 16 | Legion Fireworks Co., Inc. | 10 Legion Lane | Wappingers Falls, NY | 554391 |
| 17 | *Pyro Productions Inc. | 2083 Helms Road | Rehobeth, AL 36301 | 3723192 |
| 18 | *Pyro Shows East Coast | 4652 Catawba River Road | Catawba, SC 29704 | 3709087 |
| 19 | Pyro Shows of Alabama, Inc. | 3325 Poplar Lane | Adamsville, AL 35005 | 2859710 |
| 20 | Pyro Shows of Texas, Inc. | 6601 9 Mile Azle Rd. | Fort Worth, TX 76135 | 2432196 |
| 21 | Pyro Spectaculars, Inc. | 3196 N Locust Ave | Rialto, CA 92376 | 029329 |
| 22 | Pyro Spectaculars North, Inc. | 5301 Lang Avenue | McClellan, CA 95652 | 1671438 |
| 23 | Pyrotecnico Fireworks Inc.. | 299 Wilson Rd. | New Castle, PA 16105 | 526749 |
| 24 | RES Specialty Pyrotechnics dba RES Pyro | 21595 286th St | Belle Plaine, MN 56011 | 523981 |
| 25 | Rozzi's Famous Fireworks, Inc. | 118 Karl Brown Way | Loveland, OH 45140 | 0483686 |
| 26 | Santore's World Famous Fireworks, LLC | 846 Stillwater Bridge Road | Schaghticoke, NY 12154 | 2574135 |
| 27 | Southern Sky Fireworks, LLC | 6181 Denham Rd. | Sycamore, GA 31790-2603 | 3168056 |
| 28 | Spielbauer Fireworks Co, Inc. | 1976 Lane Road | Green Bay, WI 54311 | 046479 |
| 29 | Vermont Fireworks Co., dba | 2235 Vermont Route 14 South | East Montpelier, VT 05651 | 310632 |
| 30 | Western Display Fireworks, Ltd. | 10946 S. New Era Rd. | Canby, OR 97013 | 498941 |
| 31 | Wolverine Fireworks Display, Inc | 205 W Seidlers | Kawkawlin, MI | 376857 |
| 32 | Young Explosives Corp. | 2165 New Michigan Rd. | Canandaigua, NY 14618 | 450304 |

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